

APPLICABILITY OF STATE AND LOCAL LAWS TO ACTIVITIES OF THE NATIONAL PARK SERVICE

- 1. As a general principle, state or local governments may not directly enforce their laws against the National Park Service, with respect to federal lands and activities within units of the National Park System.**
- 2. As to federal lands, the Constitution provides that Congress shall have the power to "make all needful rules and regulations respecting the Territory or other property belonging to the United States." U.S. Constitution, Art. IV, Section 3, Clause 2.**
 - a. This constitutional delegation of authority over federal lands to Congress, and the subsequent re-delegation of that authority to the various land administering agencies, prevents the states from enforcing their laws and regulations that pertain to lands, such as:**
 - i. Zoning**
 - ii. Building permits**
 - iii. Land use regulations**
 - b. On the other hand, the Property Clause of the Constitution gives the United States and its executive branch agencies authority to regulate private lands when uses of or activities on those lands could have an impact on federal lands. Therefore, The Park Service and other land holding agencies to some extent may regulate in-holdings and adjacent lands.**
- 3. As to federal activities, the Constitution provides that the laws of the United States, pursuant to which such activities are undertaken, are "the supreme law of the land." The doctrine of Sovereign Immunity is an outgrowth of the Supremacy Clause. This doctrine holds that the United States is not subject to state or local laws unless Congress has so provided in explicit legislation.**
 - a. The doctrine of sovereign immunity prevents the United States**

from being sued, except as allowed by Congress.

- b. Sovereign immunity also prevents the application of state and local laws to the lands and activities of the United States.
- c. Sovereign immunity prevents states from asserting licensing requirements against the activities of federal employees, unless agencies require such licensing. Example: state requirements that plans be prepared and sealed by a state-licensed engineer are not enforceable; States cannot require that federal attorneys be a member of the bar in the state where they are located.
- d. Sovereign immunity prevents a state from asserting its taxing power over the federal government. There are a growing number of environmental statutes that assess fees for inspections and such that look like prohibited taxes.
 - i. Agencies may not pay taxes assessed by state or local governments.
 - ii. Agencies may pay the reasonable value of "services rendered." Therefore, in some instances, for example, an agency may pay reasonable inspection fees, reasonable storm-water user fees, or improvement district user fees.

5. The United States has waived its sovereign immunity in a number of different contexts:

- a. The United States may be sued in a variety of instances:
 - i. For taking private property in violation of the 5th Amendment to the Constitution.
 - ii. For making arbitrary and capricious decisions in an administrative setting.
 - iii. For negligently causing damage to persons or property.
 - iv. For breach of contract.
- b. The United States may be subject to state and local laws and

penalties where federal legislation has waived the United States' sovereign immunity, such as:

- i. Clean Water Act, 33 U.S.C. § 1323.
 - ii. Clean Air Act, 42 U.S.C. § 7418.
 - iii. Underground Storage Tank Act, 42 U.S.C. § 6991f
 - iv. CERCLA, 42 U.S.C. § 9620.
 - v. Safe Drinking Water Act, 42 U.S.C. § 300j-6(a).
 - vi. RCRA, 42 U.S.C. § 6961.
- c. A waiver of sovereign immunity must be strictly construed. Federal agencies need not submit to state and local laws unless the legislative waiver is clear. Examples:
- i. Clean Water Act waiver does not apply to percolating discharges to groundwater.
 - ii. Punitive damages usually may not be asserted by state agency for violation of state environmental legislation.
 - iii. City ordinances and regulations are not included within the waiver of sovereign immunity.
 - iv. Regulations sought to be enforced by states and local governments must have been promulgated to enforce state laws pertaining to the precise subject matter at issue. Thus, the state cannot use a RCRA type regulation in the context of a Clean Water Act violation.
 - v. State environmental regulations requiring that plans for waste water facilities be sealed by a state licensed engineer are not covered by the CWA waiver of sovereign immunity.

